

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC., and)	
NICE SYSTEMS, LTD.,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 06-311-JJF
)	
WITNESS SYSTEMS, INC.,)	REDACTED VERSION
)	
Defendant.)	

**DECLARATION OF JOSEPH M. DRAYTON
IN SUPPORT OF PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT WITNESS SYSTEMS, INC.'S MOTIONS *IN LIMINE***

VOLUME 3 OF 3

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Attorneys for Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd.

Dated: December 28, 2007

EXHIBIT JJ

REDACTED

EXHIBIT KK

REDACTED

EXHIBIT LL

REDACTED

EXHIBIT MM

REDACTED

EXHIBIT NN

REDACTED

EXHIBIT OO

REDACTED

EXHIBIT PP

REDACTED

EXHIBIT QQ

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NICE SYSTEMS, INC., a Delaware Corporation, and)	
NICE SYSTEMS, LTD., an Israeli Corporation,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 06-311-JJF
)	
WITNESS SYSTEMS, INC, a Delaware Corporation,)	
)	
Defendant.)	

**PLAINTIFFS' INITIAL DISCLOSURES
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)**

Pursuant to Fed. R. Civ. P. 26(a)(1), and based on the information reasonably available to them, plaintiffs NICE Systems, Inc. ("NICE") and NICE Systems Ltd. ("NICE Ltd."), hereby make the following initial disclosures. NICE and NICE, Ltd. submit these Initial Disclosures based upon information they have acquired to date, and reserve all rights, consistent with Rule 26(e), to modify, amend, and/or supplement the disclosures made herein as additional evidence and information become available.

I. Fed. R. Civ. P. 26(a)(1)(A).

The names, addresses and phone numbers of individuals who are likely to have discoverable information are set forth below.

A. Employees of NICE or NICE Ltd., and as such should only be contacted through Plaintiffs' counsel:

1. Ilan Yosef is Vice President for Products & Technology at NICE Ltd and may have relevant information relating to the technical aspects of products related to one or more

of patents at issue. Mr. Yosef is also an inventor of U.S. Patent No. 7,010,109 (the “‘109 Patent”), and therefore may have relevant information regarding the conception, reduction to practice and development of that patent.

2. Francois Nale is Corporate Director for Sales Operations at NICE Systems Ltd. and may have relevant information relating to sales of products covered by the one or more of the patents at issue.

3. Avishai Elazar is an inventor of U.S. Patent No. 6,959,079 (the “‘079 Patent”), and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Elazar’s address is not known.

4. Ilan Freedman is an inventor of the ‘109 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Freedman’s address is not known.

5. Hagay Gritzer is an inventor of the ‘109 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Gritzer’s address is not known.

B. Non-Party Witnesses:

1. Robert Swick is an inventor of the ‘371 Patent and the ‘005 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Swick is represented by Kaye Scholer LLP, and as such should only be contacted through his counsel.

2. David Glowny is an inventor of U.S. Patent No. 6,249,570 (the “‘570 Patent”), U.S. Patent No. 6,728,345 (the “‘345 Patent”) and U.S. Patent No. 6,785,370 (the “‘370 Patent”), and therefore may have relevant information regarding the conception, reduction to

practice and development of those patents. Mr. Glowny is represented by Kaye Scholer LLP, and as such should only be contacted through his counsel.

3. John Henits is an inventor of the '371 Patent, the '005 Patent, U.S. Patent No. 6,870,920 (the "'920 Patent'") and U.S. Patent No. 6,775,372 (the "'372 Patent'"), and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Henits is represented by Kaye Scholer LLP, and as such should only be contacted through his counsel.

4. John Richter is an inventor of the '570 Patent, the '345 Patent and the '370 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Richter is represented by Kaye Scholer LLP, and as such should only be contacted through his counsel.

5. Salvatore Morlando is an inventor of the '738 Patent and the '005 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Morlando is presented by Kaye Scholer LLP, and as such should only be contacted through his counsel.

6. Constantine Messologitis is an inventor of the '371 Patent and the '005 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Messologitis resides 106 West Rutland Road, Milford, CT 06460.

7. Daniel Daly is an inventor of U.S. Patent No. 5,274,738 (the "'738 Patent'") and U.S. Patent No. 5,819,005 (the "'005 Patent'"), and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Daly's address is not known.

8. John Dwyer is an inventor of the '738 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Dwyer's address is not known.

9. Christopher Goane is an inventor of U.S. Patent No. 5,396,371 (the "'371 Patent"), and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Goane's address is not known.

10. Thomas Grandy is an inventor of the '738 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Gandy's address is not known.

11. Mark Harris is an inventor of the '738 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Harris's address is not known.

12. Phil Min Ni is an inventor of the '570 Patent, the '345 Patent and the '370 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of those patents. Mr. Ni resides at 2132 Avalon Gates, Trumbull, Connecticut 06611.

13. Mark Sekas is an inventor of the '738 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Sekas's address is not known.

14. Shamla Sharma is an inventor of the '738 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Sharma's address is not known.

15. Danny Shporer is an inventor of the '109 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Shporer's address is Moshe Aviv Tower, 54th Floor, 7 Jabotinsky Street, 52520 Ramat Gan, Israel.

16. Jy-Hong Su is an inventor of the '738 Patent, and therefore may have relevant information regarding the conception, reduction to practice and development of that patent. Mr. Su's address is not known.

17. Scott McKechnie is an employee of Avaya, Inc. and may have relevant information relating to the accused products. Mr. McKechnie's address is Avaya, Inc., 211 Mt. Airy Road, Basking Ridge, New Jersey 07920.

18. David Raanan is an employee of Avaya, Inc. and may have relevant information relating to the accused products. Mr. Raanan's address is Avaya, Inc., 211 Mt. Airy Road, Basking Ridge, New Jersey 07920.

19. Mike Thurk is an employee of Avaya, Inc. and may have relevant information relating to the accused products. Mr. Thurk's address is Avaya, Inc., 211 Mt. Airy Road, Basking Ridge, New Jersey 07920.

20. Christopher Blair is the Chief Technology of Witness Systems, Inc. and a principal of Software Hothouse Ltd. Mr. Blair may have relevant information relating to the accused products.

21. Other employees of Witness Systems, Inc. and Software Hothouse Ltd. which may have relevant information concerning the accused products.

II. Fed. R. Civ. P. 26(a)(1)(B).

The following is a description by category and location of documents and things that NICE and/or NICE Ltd. may use to support their claims or defenses.

A. Documents relating to the '079 Patent and '109 Patent, including the patent application and file histories, are located at NICE Systems, Ltd., 8 Hapnina Street, Ra'anana 43107 Israel.

B. Documents relating to the '738 Patent, '371 Patent, '005 Patent, '570 Patent, '345 Patent, '372 Patent, '370 Patent and '920 Patent, including the patent application and file histories, and any products covered by one or more of those patents are located at: (1) Bulova Technologies EMS LLC, 3900 West Sarno Road, Melbourne, FL 32934, (2) Nice Systems, Inc., 717 17th Street, Suite 1800, Denver, CO 80202 and (3) Kaye Scholer LLP, 425 Park Avenue, New York, NY 10022.

C. Documents relating to financial and marketing information are located at Nice Systems, Inc., 301 Route 17 North, 10th Floor, Rutherford, New Jersey 07070.

D. Documents relating to litigation and other legal and/or administrative proceedings involving or related to the patents-in-suit.

E. Documents relating to the patents-in-suit and the accused products in the possession of Witness.

III. Fed. R. Civ. P. 26(a)(1)(C).

NICE and NICE Ltd. have not yet determined their damages calculation in this action. In addition to the damages which NICE and NICE Ltd. will seek to recover from Witness's infringement, they seek costs, expenses, reasonable attorney's fees and other fees as the Court may deem appropriate.

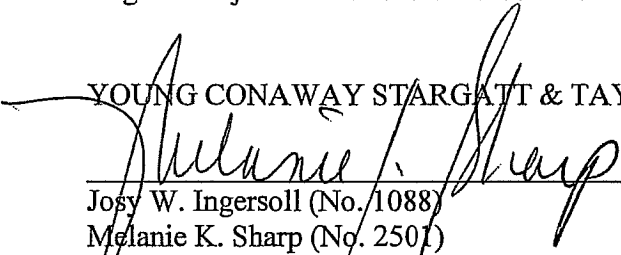
IV. Fed. R. Civ. P. 26(a)(1)(D).

Neither NICE nor NICE Ltd. is aware of an insurance agreement that must be disclosed pursuant to this rule.

NICE and NICE Ltd. submit the foregoing initial disclosures without waiving (1) the right to object to discovery on any proper grounds, including attorney client or work product privileges, competency, undue burden, relevancy and materiality; (2) the right to object to the use of any such information, for any purpose, in whole or in part, in any other proceeding in this or any other action; and (3) the right to object on any grounds, at any time, to any discovery request or proceeding relating to or involving the subject matter of this disclosure.

Dated: October 17, 2006

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Attorneys for Plaintiffs Nice Systems, Inc. and Nice Systems, Ltd.

CERTIFICATE OF SERVICE

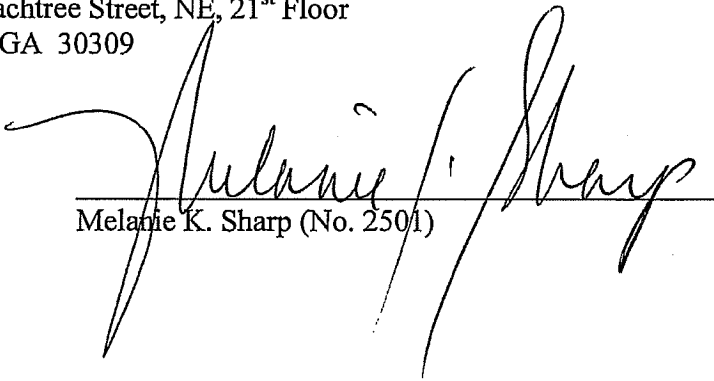
I, Melanie K. Sharp, Esquire, hereby certify that on October 17, 2006, I caused a copy of the foregoing, Plaintiffs' Initial Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1), to be served on the following counsel in the manner indicated:

BY HAND DELIVERY AND EMAIL

William J. Marsden, Jr.
Kyle Wagner Compton
Fish & Richardson, P.C.
919 North Market Street
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Wilmington, DE 19899-1114

BY EMAIL

Noah C. Graubart
Nagendra Setty
John Hamann
Christopher O. Green
Daniel A. Kent, Esquire
Fish & Richardson, P.C.
1180 Peachtree Street, NE, 21st Floor
Atlanta, GA 30309



Melanie K. Sharp (No. 2501)

EXHIBIT RR

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NICE SYSTEMS, INC. and
NICE SYSTEMS LTD.,

Plaintiffs,

v.

WITNESS SYSTEMS, INC.,

Defendant.

C.A. No. 06-311-JJF

DEFENDANT'S INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendant Witness Systems, Inc. ("Witness") makes the following initial disclosures. Witness is continuing its investigation, including conducting a reasonable search for relevant documents and witnesses, and will supplement these disclosures in a timely manner, where necessary, in accordance with Rule 26(e).

I. INDIVIDUALS

The following individuals are employed by or affiliated with Witness Systems, Inc., located at 300 Colonial Center Parkway, Roswell, Georgia 30076, and can be contacted only through Witness' counsel at Fish & Richardson. These individuals are likely to have discoverable information that Witness may use to support its defenses and any claims that Witness may assert in this case:

Witness	
Kevin Hegebarth	Marketing, design, and development of accused Witness products.
Nancy Treaster	Marketing of accused Witness products.
Christopher Blair	Technical aspects of accused Witness products.
Jeff Ianonne	Technical aspects of accused Witness products.
Ed Murray	Technical aspects of accused Witness products.
Kathy Miller	Sales of accused Witness products.
William Evans	Witness' general financial performance and the financial performance of accused Witness products.

The following former Witness employees are likely to have discoverable information that Witness may use to support its claims or defenses. These individuals may have continuing obligations of confidentiality to Witness and also should be contacted through Witness' counsel at Fish & Richardson.

Witness	
John May	Technical information concerning accused Witness products.
Chris Straut	Technical information concerning accused Witness products.
Doug Gisby	Technical information concerning accused Witness products.
Chris Jeffs	Sales and marketing information concerning accused Witness products.

The following categories of current or former employees of NICE Systems Ltd. and/or NICE Systems, Inc. (collectively "NICE") are likely to have discoverable information that Witness may use to support its claims or defenses:

Unknown individuals NICE Systems, Inc. 301 Route 17 North 10 th Floor Rutherford, NJ 07070	Technical, financial, sales, marketing and/or product management information concerning NICE products that allegedly embody the inventions, if any, of the patents-in-suit.
Unknown individuals NICE Systems, Ltd. 8 Hapnina Drive, Ra'anana 43107 Israel	Technical, financial, sales, marketing and/or product management information concerning NICE products that allegedly embody the inventions, if any, of the patents-in-suit.
Unknown individuals (former Dictaphone employees)	Technical, financial, sales, marketing and/or product management information concerning current or former Dictaphone and/or NICE products that allegedly embody the inventions, if any, of the patents-in-suit.
Inventors of all NICE patents-in-suit	Conception, reduction to practice, diligence, design and, development of the subject matter claimed in all of the NICE patents-in-suit.

II. DOCUMENTS

Witness has conducted and continues to conduct a reasonable search and has located in its possession, custody, or control the following categories of documents that it may use to support its claims or defenses. Such documents are located either at Witness Systems' facilities in Roswell, Georgia, or Leatherhead, England, or at the offices of Witness Systems' litigation counsel, and which will be made available to NICE's counsel for inspection and copying at a mutually agreeable time and place, subject to the entry of

an appropriate protective order, particularly as it pertains to sensitive technical and commercial information identified below.

- The patents-in-suit;
- File histories for the patents-in-suit;
- Documents regarding NICE and/or Dictaphone products;
- Press releases, web pages, articles and other publicly available information about the relevant industry and accused products;
- Documents regarding the development of the accused products;
- Documents regarding Witness products that are prior art to the patents-in-suit;
- Witness patent applications that are prior art to the patents-in-suit;
- Additional prior art documents;
- Documents showing NICE's knowledge of prior art that it did not disclose to the U.S. Patent & Trademark Office;
- Documents regarding the sales and marketing of the accused products;
- NICE's financial disclosures, annual reports, public filings, and Internet web pages;
- Documents from *STS Software Systems Ltd. v. Witness Systems, Inc.*, Case No. 1:04-CV-2111-RWS (N.D. Ga.) subject to the terms of the Protective Order;
- Documents from *Witness Systems, Inc. v. NICE Systems, Inc. & NICE Systems Ltd.*, Case No. 1:04-CV-2531-CAP (N.D. Ga.) subject to the terms of the Protective Order;
- Documents from *Witness Systems, Inc. v. NICE Systems, Inc. & NICE Systems Ltd.*, Case No. 1:06-CV-0126-TCB (N.D. Ga.) subject to the terms of the Protective Order; and
- Documents concerning earlier litigation matters in which at least one of the NICE patents-in-suit was involved.

III. COMPUTATION OF DAMAGES

Witness will seek costs of suit, attorneys' fees under 35 U.S.C. § 285, and any other relief that is deemed just and proper.

IV. INSURANCE AGREEMENT

Witness is unaware of any applicable agreement.

Dated: October 17, 2006

FISH & RICHARDSON P.C.

By: /s/ William J. Marsden, Jr.

William J. Marsden, Jr. (#2247)

Kyle Wagner Compton (#4693)

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Tel: (404) 892-5005

Attorneys for Defendant

Witness Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2006, I caused a copy of
DEFENDANT'S INITIAL DISCLOSURES to be served on the following counsel of
record in the manner indicated below:

VIA ELECTRONIC & FIRST CLASS MAIL:

Josy W. Ingersoll
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Wilmington, DE 19899

*Attorneys for Plaintiffs
Nice Systems Ltd. and Nice Systems, Inc.*

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Daniel DiNapoli
Joseph M. Drayton
Robert R. Laurenzi
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425 Park Avenue
New York, NY 10022

*Attorneys for Plaintiffs
Nice Systems Ltd. and Nice Systems, Inc.*

/s/ Kyle Wagner Compton
Kyle Wagner Compton

EXHIBIT SS

077815202

DECLARATION AND POWER OF ATTORNEY Patent Application	Attorney's Docket Number DIC-588
Page 1 of 4	

As below named inventors, we hereby declare that:

our residences, post office addresses and citizenships are as stated below next to our names;

we verily believe that we are the original, first and joint inventors of the invention entitled

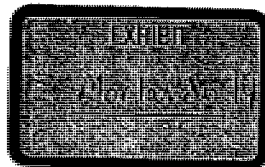
MODULAR DIGITAL VOICE PROCESSING SYSTEM

described and claimed in the attached specification;

we have reviewed and understand the contents of the above-identified specification, including the claims;

we acknowledge our duty to disclose information of which we are aware which is material to examination of this application in accordance with Title 37, Code of Federal Regulations, section 1.56(a); and

we do not know and do not believe the invention was ever known or used in the United States of America before our invention thereof, or patented or described in any printed publication in any country before our invention thereof or more than one year prior to this application, that the invention was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on any application filed by us or our legal representatives or assigns more than twelve months prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by us or our legal representatives or assigns.



WSNSDE0008586

DECLARATION AND POWER OF ATTORNEY Patent Application		Attorney's Docket Number DIC-588	
		Page 2 of 4	
<p>We hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith;</p> <p> Peter Vrahotes Reg. No. 22,529 </p> <p> Melvin J. Scolnick Reg. No. 25,233 </p> <p> David E. Pitchenik Reg. No. 24,020 </p> <p> Robert E. Meyer Reg. No. 26,307 </p> <p>Address all telephone calls to Peter Vrahotes at telephone No.: (203) 351-7566</p> <p>Address all correspondence <u>Peter Vrahotes</u> <u>Pitney Bowes Inc.</u> <u>Intellectual Property and</u> <u>Technology Law Department</u> <u>World Headquarters</u> <u>One Elmcroft Road</u> <u>Stamford, Connecticut 06926-0700</u></p> <p>We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.</p>			
FULL NAME	Last <u>Daly</u>	First <u>Daniel</u>	Middle <u>E.</u>
Residence & Citizenship	City <u>Monroe</u>	State <u>CT.</u>	Citizenship <u>U.S.</u>
Post Office Address	Street Address <u>194 Barn Hill Road</u>	City <u>Monroe</u>	State <u>CT.</u>
			Zip Code <u>06468</u>
Signature of Inventor <u>Daniel F. Daly</u>			Date <u>12/19/91</u>

WSNSDE0008587

DECLARATION AND POWER OF ATTORNEY Patent Application				Attorney's Docket Number DIC-588	
Page 3 of 4					
FULL NAME	Last Dwyer	First John	Middle J.		
Residence & Citizenship	City Stratford	State CT.	Citizenship U.S.		
Post Office Address	Street Address 224 Freeman Avenue	City Stratford	State CT.	Zip Code 06497	
Signature of Inventor				Date 12-19-91	
FULL NAME	Last Harris	First Mark	Middle N.		
Residence & Citizenship	City New Haven	State CT	Citizenship U.S.		
Post Office Address	Street Address 64 Roger White Drive	City New Haven	State CT	Zip Code 06511	
Signature of Inventor				Date 12/19/91	
FULL NAME	Last Morlando	First Salvatore	Middle J.		
Residence & Citizenship	City Easton	State CT.	Citizenship U.S.		
Post Office Address	Street Address 15 Jamestown Road	City Easton	State CT.	Zip Code 06612	
Signature of Inventor				Date 12/19/91	

FULL NAME	Last Daly	First Daniel	Middle F.		
Residence & Citizenship	City Huntington	State CT.	Citizenship U.S.		
Post Office Address	Street Address 23 L'Hermitage Drive	City Huntington	State CT.	Zip Code 06460	
Signature of Inventor				Date 12/19/91	

WSNSDE0008588

DECLARATION AND POWER OF ATTORNEY Patent Application				Attorney's Docket Number DIC-588	
Page 4 of 4					
FULL NAME	Last Sakas <u>40600</u>	First Mark	Middle		
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Post Office Address	Street Address 298 Karen Drive	City Orange	State CT.	Zip Code 06477	
Signature of Inventor <u>Mark Sakas</u>				Date 12/19/91	
FULL NAME	Last Sharma <u>40700</u>	First Sharma	Middle Y.		
Residence & Citizenship	City Norwalk <u>CT</u>	State CT.	Citizenship U.S.		
Post Office Address	Street Address 6 Live Oak Road	City Norwalk	State CT.	Zip Code 06851	
Signature of Inventor <u>Shamla V. Sharma</u>				Date 12/19/91	
FULL NAME	Last Su <u>40800</u>	First Jy-Hong	Middle		
Residence & Citizenship	City Norwalk <u>CT</u>	State CT.	Citizenship U.S.		
Post Office Address	Street Address 14 Hunters Lane	City Norwalk	State CT.	Zip Code 06850	
Signature of Inventor <u>Jy-Hong Su</u>				Date 12/19/91	

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